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10/749,523	01/02/2004	Aldo Y. Guloy	23700.00	8699

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EXAMINER
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DANIELS, MATTHEW J

ART UNIT	PAPER NUMBER
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1732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/749,523	Applicant(s) GULOY, ALDO Y.	
	Examiner Matthew J. Daniels	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2, 8, 14 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 9-13, 15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. The election of Group I, Claims 3-7, 9-13, 15, and 17-19 was confirmed on page 8 of the remarks. The traversal is on the ground(s) that each withdrawn article claim is dependent upon a specific method claim and therefore can only be made by the recited steps of the claimed method. Applicant's remarks further assert that none of the articles can be made by stereo lithography or slush casting.

This is not found persuasive because product-by-process claims are defined by their structural limitations, and not by the method in which they are made. The method of making does not materially affect the article except to the extent that a particular structure is provided. However, Applicant's remarks do not provide any arguments why the claimed articles or structures could not be made by the alternative methods set forth in the restriction requirement.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Rejections set forth previously are withdrawn in view of the amended claims.

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3. **Claims 1 and 20** are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (USPN 3341644). **As to Claim 1**, Allen teaches a method of manufacturing an article that could be used as a decorative flower pot having an outer peripheral surface with embossed decorations (Fig. 5, item 22), comprising the steps of:

forming a female mold cavity of an article that could be used as a flower pot, the mold cavity having walls (Fig. 4, items 20, 21, 41), a bottom (Fig. 6, item 32') and contours disposed on said walls (Fig. 4, item 41); said contours corresponding to a desired embossed design, the bottom of the mold cavity having a substantially planar surface (Fig. 5, item 24, Fig. 6, item 32'); and

vacuum forming an article that could be used as a plastic flower pot in the mold (Fig. 4 and Fig. 6, item 38'), the article that could be used as a flower pot having embossed decorations on the outer peripheral surface of the flower pot and a substantially planar outer bottom surface (Fig. 5, item 24, Fig. 6, item 32').

**As to Claim 20**, the vacuum forming of Allen provides a substantially planar outer bottom surface as an imperforate surface (figures, all articles are imperforate).

4. **Claim 9** is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Allen (USPN 3341644). Allen teaches the subject matter of Claim 1 above under 35 USC 102(b). **As to Claim 9**, it is unclear how "sides" should be interpreted. In a first interpretation, the round article disclosed by Allen provides at least left and right sides. A round article can be considered to have an infinite number of sides or facets, anticipating the claimed invention in combination with items 41, 21', 20, which providing

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multiple contours. In the alternative, it would be prima facie obvious to vary the shape or aesthetic appearance of the resulting article. See MPEP 2144.04(I) and (IV).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim rejections set forth previously under this section are withdrawn in view of the amended claims.
6. **Claims 3, 4, and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (USPN 3341644). Allen teaches the subject matter of Claim 1 above under 35 USC 102(b). **As to Claim 3**, Allen teaches clamping (Fig. 6, item 3') and heating (4:1-4), but appears to be silent to the particular order claimed. However, any order of performing these steps would have been obvious, and one would have been motivated to clamp prior to heating in order to avoid wrinkles or distortion in the sheet. **As to Claim 4**, Allen teaches the step of placing in the mold cavity while in the elastic state (Fig. 4, also see 4:1-4). **As to Claim 6**, the vacuum forming of Allen comprises removing air from the mold cavity by vacuum, forcing the sheet against the mold cavity (See Fig. 6, items 38', 37', 33', and the text which describes these elements).

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7. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (USPN 3341644) in view of Gravely (USPN 2015669)). Allen teaches the subject matter of Claim 1 above under 35 USC 102(b). **As to Claim 5**, Allen is silent to the claimed rotational offset printing process. However, Gravely teaches rotational offset printing onto shaped articles, and further that the offset printing method are the preferred method (Page 2, right column, lines 56-66). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Gravely into that of Allen because (a) it would be desirable to decorate the articles of Allen and (b) the offset printing process lends itself to large scale automatic or semi-automatic machine operations, which would increase the efficiency of the method of Allen by replacing hand decoration operations.

8. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (USPN 3341644) in view of Renner (USPN 2355559). Allen teaches the subject matter of Claim 1 above under 35 USC 102(b). **As to Claim 7**, Allen is silent to steps of forming an embossed wrapper and bonding the wrapper to the article. However, wrappers for articles, and particularly for articles which are to be used as flower pots, are conventional. For example, Renner teaches forming an embossed wrapper (Fig. 1) having an inner surface and decorative outer surface, the embossed design being substantially identical to the embossed decorations on the flower pot (Fig. 1, item 23), and the decorative outer surface conforming to the article (page 2, left col, line 70 to right col. Line 15 and page 2 right col., lines 62-70). Renner also teaches bonding the inner surface of said wrapper to at least a portion of the outer peripheral surface of said flower pot (page 3, left col., lines 13-18, fig. 1, and page 2, left col., lines 35-52). The decorative design of

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Renner is undistorted by forming processes (Figs. 1, 3, and 4). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Renner into that of Allen because Allen provides containers and Renner teaches that it is desirable to improve the appearance of containers by providing a decorative cover (Renner, page 1, left col., lines 1-55).

9. **Claims 10-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (USPN 3341644) in view of Renner (USPN 2355559). **As to Claim 10**, Allen teaches a method of providing an article that could be used as a flower pot with a decorative exterior, comprising the steps of:

vacuum forming a plastic article that could be used as a flower pot having an outer peripheral surface and a substantially flat outer bottom surface (Figs. 4-6);

whereby a decorative article that could be used as a flower pot is formed, said flower pot having a decorative design disposed on the outer peripheral surface of said flower pot, the design being undistorted by the vacuum forming process (Fig. 5, item 22).

Allen is silent to (a) forming a wrapper having an inner surface and a decorative outer surface, and (b) bonding the inner surface of said wrapper to at least a portion of the outer peripheral surface of said flower pot.

However, wrappers for articles, and particularly for articles which are to be used as flower pots, are conventional. For example, Renner teaches (a) forming a wrapper having an inner surface and a decorative outer surface (Fig. 1), and (b) bonding the inner surface of said

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wrapper to at least a portion of the outer peripheral surface of said flower pot (page 3, left col., lines 13-18, fig. 1, and page 2, left col., lines 35-52).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Renner into that of Allen because Allen provides containers and Renner teaches that it is desirable to improve the appearance of containers by providing a cover (Renner, page 1, left col., lines 1-55).

As to **Claim 11**, the step of vacuum forming disclosed by Allen provides an embossed design on the outer peripheral surface of the article (Fig. 5, item 22). As to **Claim 12**, Renner provides a step of embossing a design on at least a portion of the outer surface of the wrapper (Fig. 3, item 23 and Fig. 2, for example) which would further improve the decorative effect and motivating one to make the combination. As to **Claim 13**, it is unclear if "sides" should be interpreted to be facets. In the interpretation that a round article such as that explicitly disclosed by Allen provides at least left and right sides, then the claim would be obvious in combination with items 41, 21', 20, which providing multiple contours. In the interpretation that "sides" should be interpreted to be synonymous with "facets", then it would be prima facie obvious to vary the shape or aesthetic appearance of the resulting article. See MPEP 2144.04(I) and (IV).

10. **Claims 15 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (USPN 3341644) in view of Snyder (USPN 3225461). As to **Claim 15**, Allen teaches a method of providing an article that could be used as a flower pot, comprising the steps of:

Providing a plastic sheet having an upper surface and lower surface (Figures);



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Forming a female mold cavity of the article which could be used as a flower pot, the mold cavity having walls, contours, and a substantially planar bottom surface (Figures, the article has at least left and right walls and multiple contours on the wall);

Clamping the plastic sheet in a frame (Fig. 6);

Heating the plastic substrate (4:1-4);

Placing the plastic sheet and frame over the female mold cavity while the sheet is in an elastic state (Figs. 4 and 6);

Removing the air from the mold cavity by a vacuum process, forcing the heated plastic sheet against the walls and contours of the mold cavity (Fig. 4, items 38, 33, 39);

Whereby the article which could be used as a plastic flower pot is formed with a desired pattern on the outer peripheral surface of the article and having a substantially flat outer bottom surface (Fig. 5, item 24).

Allen is silent to a step of forming a compressed image on at least a portion of the lower surface of the plastic sheet, the image being a visually distorted representation of a desired pattern. However, Snyder teaches substantially the same method comprising:

Providing a plastic sheet having upper and lower surfaces (Figs. 1 and 2);

Forming a compressed image on at least a portion of the lower surface, the image being a visually distorted representation of a desired pattern (3:15-20);

Forming a female mold cavity of the article, the article having walls, contours, and a bottom surface (Fig. 1);

Clamping the plastic sheet in a frame (Fig. 2);

Heating the sheet (4:45-75)

Placing the plastic sheet and frame over the female mold cavity in an elastic state (3:45-75);

Removing the air by a vacuum forming process, forcing the heated plastic sheet against the walls and contours of the mold cavity (Fig. 2),

Whereby an article is formed having an undistorted image of a desired pattern on the outer peripheral surface (Fig. 5).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Snyder into that of Allen because designs and indicia are known to be provided to the outside of containers and because Snyder's method would provide an undistorted design or indicia to the outside of the article of Allen.

**As to Claim 17**, Snyder compensates for distortion undergone when stretched (3:15-20).

11. **Claims 18 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (USPN 3341644) in view of Snyder (USPN 3225461), and further in view of Knoll (USPN 3458614). Allen and Snyder teach the subject matter of Claim 17 above under 35 USC 103(a).

**As to Claims 18 and 19**, Allen is silent to the claimed grid approach. However, when providing a compressed image to a thermoformed article, such as in the method of Snyder, it is known to provide a grid pattern and overlay the grip pattern in the manner claimed. For example, Knoll teaches imprinting a grid on a plastic template sheet (3:45-70, 5:52-6:58), the grid having identifiable sections, and vacuum forming the sheet (2:1-20), distorting the sheet and grid. Knoll further employs the template by overlaying it on an article having the desired pattern, and determining each grid section color (5:67-6:58). It would have been prima facie obvious to one

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of ordinary skill in the art at the time of the invention to incorporate the method of Knoll into that of Allen because designs and indicia are known to be provided to the outside of containers and because Knoll's method would provide an undistorted design or indicia to the outside of the article of Allen. Furthermore, Knoll's method would provide a simple method for rapidly determining the degree of distortion required to mold shapes accurately registered with the structure or contour.

### *Response to Arguments*

12. Applicant's arguments filed 31 January 2007 have been fully considered but they are not persuasive or moot in view of the new rejections above. The arguments appear to be on the following grounds:

- a) Claims 1, 10, and 15 now recite a substantially planar bottom surface. It is axiomatic that Snyder's spherical globe cannot possess a flat bottom surface.
- b) New claim 20 is drawn to an imperforate bottom surface.

13. These arguments are not persuasive or are moot for the following reasons:

a, b) While it is acknowledged that the figures of Snyder show a hole in the globe, it has not been pointed out that this (hole) is a required element. Moreover, the reference is still a valid teaching reference for desirable aspects about pre-distortion or pre-compression of printed images on thermoformed sheets.

Additionally, the Examiner respectfully disputes that it can be said that it is axiomatic that globes cannot possess a flat bottom surface. For example, see USPN 3511433 to Andrews

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where it is taught that an article having the shape and representation of a globe (Fig. 5) is formed by vacuum forming (4:1-5) with a flat bottom (Fig. 4). However, new rejections are set forth above and are believed to fully address all claim amendments.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJD 4/14/07

*MJD*

*cf*  
CHRISTINA JOHNSON  
SUPERVISORY PATENT EXAMINER

*4/14/07*